

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 2002-57-EC and 2007-17-EC - ORDER NO. 2008-700

OCTOBER 9, 2008

IN RE: Docket No. 2002-57-EC – James and Patricia Tarmann, Complainants)	ORDER DISMISSING
)	LATEST FILING AND
)	CLOSING DOCKETS
v.)	
)	
BellSouth Telecommunications, Inc., Duke Power and The Commission, Respondents)	
)	
and)	
)	
Docket No. 2007-17-EC – Mr. James Tarmann, Complainant)	
)	
v.)	
)	
Duke Energy Carolinas, LLC and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina, Defendants)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) as the culmination of several disputes originating in 2002 that James and Patricia Tarmann have filed against Duke Energy Carolinas, LLC (“Duke”) and BellSouth Telecommunications, Inc. d/b/a AT&T (“AT&T”). Duke and AT&T have pending Motions to Dismiss the matter. This series of disputes began under Docket No. 2002-57-EC in which the Commission ordered Duke and AT&T to safely maintain (or elevate) underground cables crossing the Tarmanns’ property that had become exposed due to erosion. Order Nos. 2003-358 (June 13, 2003) and 2003-490 (August 8, 2003).

However, on November 12, 2004, Mr. Tarmann issued a Trespass Notice that prevented the utilities from performing work on the Tarmanns' property, and on January 8, 2007, the Tarmanns filed a request for a hearing to change service providers, claiming that Duke and AT&T had abandoned their lines. On July 2, 2007, in Docket No. 2007-17-EC, the Commission issued Order No. 2007-416 that dismissed the Tarmanns' request, noting that "Mr. Tarmann has constructively abandoned his own service to the extent that the Trespass Notice prevents Duke and AT&T from maintaining their lines and equipment on his property."

In the latest filing of July 1, 2008, titled "Final Notice," Mr. Tarmann reasserts a position stated in a December 12, 2007, letter in which he claimed to "serve notice" on the Commission, alleging that the Commission has committed a regulatory taking of his property under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). In this filing, Tarmann demands compensation "for the property that has been made idle and or worthless to me by the South Carolina Public Service Commission 'regulations,'" although he fails to specify which Commission regulations caused the alleged taking. Moreover, aside from the fact that Tarmann additionally neglects to specify how he was deprived of all "economically viable use of his land" as required by *Lucas*, since the Commission has no statutory authority to award damages, we find and construe this correspondence to be a petition for rehearing or reconsideration as governed by S.C. Code Ann. § 58-27-2150 (Sup. 2007), regarding Tarmann's service issues previously raised with this Commission.

Section 58-27-2150 requires that a petition for rehearing be filed within ten days of service of the order. However, as mentioned above, the Commission previously ruled on Mr. Tarmann's request for a change in service provider by granting the motions to dismiss of Duke and AT&T in Order No. 2007-416, dated July 2, 2007. In this Order, the Commission found:

First, he [Mr. Tarmann] has created a situation that prevents Duke and AT&T from accessing and maintaining their equipment on his property because of the Trespass Notice. Next, his behavior caused at least AT&T to consider that he poses a potential danger to its employees. Moreover, Duke continues to provide electric service to his property despite these problems, and Mr. Tarmann is free to choose an alternative to AT&T, including a wireless provider...Under these circumstances, the principal of abandonment fails to apply. In short, Mr. Tarmann's request for a "rehearing/reconsideration" must be dismissed for lack of merit.

Order No. 2007-416 at 4-5. Both the December 12, 2007 takings allegation and the July 1, 2008 reassertion of this claim are clearly past the ten (10) day deadline to file for reconsideration from the July 2, 2007 Order. Moreover, this deadline for reconsideration has also passed for the Orders in Docket No. 2002-57-EC, which were issued in 2003. For this reason, among others, Duke and AT&T request that the Commission dismiss Tarmann's latest filing.

We find that the ten day deadline for seeking reconsideration has long passed in both Docket No. 2007-17-EC and Docket No. 2002-57-EC. Nothing in his "Final Notice" adds substantively to his initial complaint against Duke Energy Carolinas. Mr. Tarmann's complaint is an untimely attempt to relitigate the same issues already considered by the Commission, and he offers no new information within our jurisdiction that requires opening another complaint proceeding. Therefore, we grant the Duke and

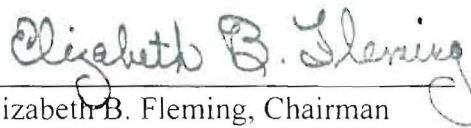
AT&T requests to dismiss Tarmann's filing, construed as a motion for reconsideration, and order that Docket Nos. 2002-57-EC and 2007-17-EC be closed.

IT IS THEREFORE ORDERED:

The motion for reconsideration is denied and dismissed and Docket Nos. 2002-57-EC and 2007-17-EC shall be closed.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman

(SEAL)